

REMARKS

The above-identified patent application has been amended and reconsideration and reexamination are requested.

Applicant has amended claims 5, 6, 11 and 16 to correct minor informalities in those claims, which were just recently discovered by applicant. These changes are minor in nature, do not affect the scope of the claims and should be entered in the event that the case is taken on appeal, since the amendments reduce the issues that may be presented on appeal.

The examiner withdrew the rejection of claims 17-19 under 35 U.S.C. 101 as being directed to non-statutory subject matter and the objection to claim 20.

The examiner maintained the following rejections: claims 1 and 17 under 35 U.S.C. 103(a) as obvious over Gaspard US Patent 6,411,897; claims 4-10 under 35 U.S.C. 103(a) as obvious over Gaspard US Patent 6,411,897 in view of Lynch 6,018,715; claims 2, 3, 18 and 19 under 35 U.S.C. 103(a) as obvious over Gaspard US Patent 6,411,897 in view of Lynch 6,018,715 and further in view of Lynch 5,839,114 (Lynch '114); and claims 11 and 20 under 35 U.S.C. 103(a) as obvious over Gaspard US Patent 6,411,897 in view of Lynch 6,018,715 and further in view of Lynch 6,119,094 (Lynch '094).

Claims 1-20 are allowable over any combination of these references.

Claim 1 is directed to an availability prediction system that predicts relative, competitive availability of seating on an airline flight. Neither Gaspard nor the other references address this subject matter. The examiner considers that Gaspard's at Col. 7 lines 53-56 teaches "a competitive scenario." Applicant has not claim nor has applicant directed the invention to a "competitive scenario." Rather, Applicant's claims and argument is directed to "an availability prediction system that predicts relative, competitive availability of seating on an airline flight" subject matter which Gaspard is totally silent on.

In claim 1, the subject matter of the claim allows a user is to predict what a competitor's availability answer for an airline seat would be in response to a query for seat availability on that competitor's flight. This allows a user airline for instance to adjust an answer that it would

otherwise give to a query based on what it, the user airline, for instance, determines that its competitor might do.

Accordingly, the elements of an availability predictor that predicts seating availability on a competitive flight, an availability system that produces an actual availability response for a flight and decision logic that compares the predicted answer from the availability predictor and the potential answer from the availability system to establish a decision with respect to actual availability are absent in Gaspard.

Gaspard is directed to a real-time scheduling system not to predicting answers to airline seat availability queries, as is the general subject matter of claim 1.

The examiner takes the position that "arrival and departure time are analogous to seat availability" (*page 2 of the final rejection*). Applicant contends that algorithms to determine arrival and departure times to generate a route schedule have nothing to do with a system that predicts whether an airline would make a seat available on a flight if queried with an availability query.

Gaspard's use of the phrase "seat availability" at Col. 11 lines 7-27 is not relevant to claim 1. Gaspard does not predict seat availability, since it is a physical fact given received transportation requests. That is, when a request comes in either the seat is available or the seat is not available. Moreover, "seat availability" as used in Gaspard is only for one's own transportation units not that of a competitor's and is not determined for the purpose of comparing a predicted answer from an availability predictor that models or predicts a competitor's availability system, and a potential answer from an availability system to establish a decision with respect to actual availability of a seat.

Gaspard is devoid of teachings that suggest decision logic that compares the predicted answer from the availability predictor (which is predicting what the competitor will answer with) and a potential answer from the availability system to establish a decision with respect to actual availability.

At col. 10 lines 60-63 the examiner considers the teachings of Gaspard directed to predicting arrival/departure times as suggesting the decision logic. First, as argued, predicting arrival/departure times has nothing at all to do with seat availability. Second, Gaspard does not

compare ... to establish a decision with respect to actual availability. Gaspard merely compares predicted time to actual time for ascertaining the reliability of the predicted times. Claim 1 is thus distinct over Gaspard.

Claims 2-16, which depend directly or indirectly on claim 1, are allowable at least for the reasons discussed in claim 1. Moreover, these claims add additional distinctive features and are allowable for the reasons discussed of record in view of Gaspard and the other cited references.

Claim 17 is also distinct over the references. Claim 17 recites ... receiving ... a request for availability of seating on an airline flight and executing ... an algorithm to predict the seating availability on a competitive flight ... receiving ... an actual availability response for a flight and comparing the predicted answer from the availability predictor and the potential answer from the availability system to establish a decision with respect to actual availability. Gaspard does not suggest at least these features of claim 17.

Gaspard does not suggest ... executing in the computer system an algorithm to predict the seating availability on a competitive flight. Gaspard does not have any features of a competitive situation where one party, e.g., a user of the method would attempt to predict how a competitor might respond in order for the user to consider an adjustment, (e.g., "to establish a decision with respect to actual availability") to an actual availability response for a flight. Claims 18-20, which depend directly or indirectly on claim 17, are allowable at least for the reasons discussed in claim 17.

The fact that applicant has not responded to any stated position of the Examiner should not be construed as a concession by applicant of those positions. The inclusion by applicant of arguments for patentability should not be construed as a concession by the applicants that there are not other good reasons for patentability of these claims or other claims.